

OFFICE OF THE SECRETARY

Dear Mr. Speaker:

There is forwarded herewith a draft of legislation "To amend title 18, United States Code, to protect the security of the United States by providing penalties for interference with defense security systems".

This proposal is a part of the Department of Defense Legislative Program for the 89th Congress. The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

#### Purpose of the Legislation

The purpose of the proposed legislation is to provide a specific statute for criminal prosecution of persons who willfully and maliciously activate, willfully or maliciously injure, or interfere with, or attempt to activate, injure, or interfere with, any defense alerting system.

Recent incidents at operational missile sites of the United States Air Force have highlighted the fact that existing statutes are inadequate to cope with willful or malicious acts that result in activating or in disrupting our military alerting or alarm systems. Unless the law is strengthened to deter such acts, the security of our nuclear missiles and other weapons systems could be seriously compromised. The mentioned incidents occurred at different times at different missile sites, but the facts are similar. Foreign objects were deliberately thrown over the outer security fence onto a sensitized surface area. This in turn caused the activation of an electronic alarm system, indicating to defense forces stationed some miles away that the secured area of the missile site had been penetrated. Armed mobile strike teams were immediately dispatched to the site by motor vehicle. The net result was that members of the strike team were subjected to unnecessary hazards and normal security operations were seriously disrupted.

Many military installations involving modern weapons systems occupy very small acreages, in remote dispersed locations that are not under the exclusive or concurrent jurisdiction of the United States. These installations are unique in that they are unmanned, and their safeguarding is dependent on uninterrupted surveillance by electronic devices

and the use of mobile strike teams responding from distant locations. The considerable number of Minuteman missile sites which will become operational in the months ahead are typical of these installations.

Increasing use is being made of electronic alarm and warning systems to supplement guard forces and to amplify their effectiveness. Interference with the proper and continuous operation of these electronic systems seriously impairs the effectiveness of security guard forces charged with the protection of nuclear and other weapons systems. Security guard forces must respond to all warning alarms, on the assumption that the alarms indicate an attempt to penetrate a security area and damage or interfere with the operations of a weapons system. False alarms, therefore, place an intolerable burden on those forces, and could result in their being unavailable for genuine emergency calls. In fact, it could reasonably be expected that persons intent on penetrating a missile site might use several false alarms as decoys to divert the attention of security guard forces from a site which is the real target for penetration.

In this connection, it should also be noted that in the near future helicopters will be used to augment motor vehicles in transporting teams responding to security alarms. Consequently, the disruptions to the security posture of our strike teams, the hazards to personnel, and the expenses generated by false alerts will be further aggravated.

Under current law, criminal prosecution for acts of this nature could be attempted under 18 U.S.C. 13, 1362, 1382, or 2155, or 50 U.S.C. 797. However, none of these existing criminal statutes offers a completely satisfactory vehicle for the prosecution of offenses involving false alarms.

18 U.S.C. 13 is the so-called Assimilative Crimes Act. Under that statute, and so far as here pertinent, acts or omissions which would be punishable under State law, if committed or omitted within the jurisdiction of that State, are, under certain conditions, punishable under Federal law if committed or omitted on Federal lands within that State. Those conditions are that the lands must have been reserved or acquired for the use of the United States and be under the exclusive or concurrent jurisdiction thereof, or purchased or otherwise acquired by the United States, by consent of the State legislature, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. However, criminal laws among the several States are not uniform, and in some cases cannot be construed to cover malicious activation of, or interference with, defense alarm systems. Furthermore, as noted above, many missile sites and defense installations are located on lands over which the United States does not exercise either exclusive or concurrent jurisdiction and which do not otherwise come within the purview of this statute. Accordingly, the Assimilative Crimes Act does not offer a solution to the problem.

18 U.S.C. 1362 provides criminal penalties for willful or malicious injury to, destruction of, or interference with communications lines, stations, or systems operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States. However, it is questionable whether a security alarm system constitutes a "communications" system within the meaning of that statute, or whether, in the absence of physical damage, activation of an alarm system can be considered an "interference" under that statute.

18 U.S.C. 1382 provides criminal penalties for anyone who, contrary to the restrictions applicable thereto, "enters, remains in, leaves, or commits any act in any military area or zone. . .". However, this statute does not, by its terms, apply to a person who causes mischief from outside the military area or zone, as exemplified by the rock-throwing incidents, since he does not technically "enter" or commit an act "in" the area or zone.

18 U.S.C. 2155 provides criminal penalties for anyone who, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully "injures, destroys, contaminates, or infects" any national-defense material, premises, or utilities. This statute likewise provides an ineffective vehicle for prosecution since it is unlikely that actual injury or destruction of material, premises, or utilities would be involved when defense security systems are maliciously activated.

50 U.S.C. 797 proscribes violations of security regulations promulgated or approved by the Secretary of Defense, any military commander designated by the Secretary of Defense, or the Director of the National Advisory Committee for Aeronautics (now the Administrator of the National Aeronautics and Space Administration), for the protection of certain types of installations and property. The regulations so promulgated must relate to specified matters, including (among other subjects) guard service, ingress to or egress from installations or property, and the safeguarding of installations or property against destruction, loss, or injury. However, the limited nature of the authority conferred by this statute makes it questionable that malicious activation of defense security systems could be covered.

It is therefore considered essential that a specific statute, directed to the problem of false security alarms, be enacted in order that, with appropriate publicity, warning systems at missile sites, aircraft alert areas, and other defense installations, can be protected from the malicious mischief of pranksters and vandals, and the security of our nuclear weapons systems be thereby enhanced. The serious impact of hoax reports of bombs on commercial aircraft brought about specific remedial legislation in 1961 (18 U.S.C. 35). The same necessity for deterrence, which led to the adoption of that legislation, is applicable here, and the imperatives are greatly magnified in view of the direct involvement of the security of our nuclear weapons system.

Cost and Budget Data

The enactment of this proposal will cause no increase in the budgetary requirements of the Department of Defense.

Sincerely,

Attachment

Honorable John W. McCormack

Speaker of the House of Representatives

IDENTICAL LETTER SUBMITTED TO PRESIDENT PRO TEMPORE OF THE SENATE